

**REMARKS:**

In an Office Action mailed January 29, 2003, claims 70-75, 78, 79, and 81 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,460,628 ("the Neuwirth et al. reference") in view of U.S. Patent No. 5,797,903 ("the Swanson et al. reference"), claims 82-84 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 5,498,238 ("the Shapland et al. reference") in view of the Swanson et al. reference, and claims 76 and 80 were rejected under 35 U.S.C. § 103(a) as obvious over the Neuwirth et al. reference in view of the Shapland et al. reference and further in view of the Swanson et al. reference.

On April 29, 2003, the Examiner was contacted by telephone to discuss an Amendment After Final filed on March 31, 2003. During the telephone interview, the Examiner indicated that claim 71 would be allowable if rewritten in independent form. In addition, the Examiner indicated that U.S. Patent No. 4,979,948 (the Geddes et al. reference") may be cited against the claims of the present application.

In an Advisory Action mailed May 6, 2003, the Examiner acknowledged that the Swanson et al. reference was not prior art to the present application, but concluded that the Shapland et al. reference disclosed the RF limitation recited in the present claims.

Because neither of the previously cited references nor the Geddes et al. reference, either alone or in combination, discloses, teaches, or suggests the subject matter of the present claims, reconsideration and withdrawal of the rejections is respectfully requested.

As an initial matter, claim 70 has been amended to include the limitations of dependent claim 71. Accordingly, because none of the Neuwirth et al., Shapland et al., and Geddes et al. references

discloses, teaches, or suggests “an expandable member disposed on the distal portion of the catheter and comprising a substantially planar distal end,” claim 70 and its dependent claims should be in condition for allowance.

With respect to the § 103(a) rejections, the Neuwirth et al. reference discloses a distendable bladder 5 attached to rigid tubing 3 for effecting necrosis of endometrial tissue. (Col. 5, lines 13-17). A heating element 44 is located within the bladder 5 that includes a heating element coil 47 that heats fluid 25 that contacts the coil 47. (Col. 6, line 67 through col. 7, line 11). During use, the device is inserted through the cervix into the uterus, and fluid is injected to inflate the bladder to ensure firm contact with the tissue being necrosed. (Col. 5, lines 14-28). Once the bladder is filled, access to the fluid system is closed off such that the fluid is non-circulating during the heating portion of the procedure. (Col. 10, lines 24-29). Thus, the Neuwirth et al. reference fails to disclose, teach, or suggest an expandable member including a plurality of perforations through which the electrolyte fluid flows to the target site, as recited in claim 79.

Turning to the Shapland et al. reference, a phoretic drug delivery catheter is disclosed that includes a catheter body 11 with a permeable balloon 26 thereon and a cathode electrode 31 on or within the catheter body 11. (Col. 8, lines 15-20). The electrode 31 is coupled to a source of direct current to promote iontophoretic movement of ionic molecules of a drug or fixative across the balloon wall. (Col. 8, lines 21-28; Fig. 6). In another embodiment, the Shapland et al. reference discloses using phonophoresis, i.e., ultrasonic or high frequency sound waves, to transport drugs. (Col. 9, lines 13-14). When phonophoresis is used, the direct current (cathode) electrode is replaced with a piezoelectric transducer that is used optimally at a frequency of about 1 MHz. (Col. 9, lines

40-59). Thus, the Shapland et al. reference also fails to disclose, teach, or suggest an RF electrode disposed within an expandable member with perforations, as claimed. Because these features are also wholly absent from the Neuwirth et al. reference, claim 79 and its dependent claim are not obvious in light of the cited references.

For similar reasons, claim 82, which recites a porous member attached to the distal portion of a catheter, and an electrode disposed in the interior region of the porous member, is also not obvious in light of the cited references.

Finally, with respect to the Geddes et al. references, because it fails to disclose, teach, or suggest a porous member or an expandable member including a plurality of perforations through which electrolyte fluid flows to a target site, claims 79 and 82 are not obvious even if this reference were cited and somehow properly combined with the previously cited references.


If the Examiner concludes that the present application is in condition for allowance, Applicants request that claim 77, directed to an unelected species, be reinstated.

In view of the foregoing, it is submitted that the present application is now in condition for allowance. Accordingly, reconsideration and allowance of the application is requested.

Respectfully submitted,

**BINGHAM McCUTCHEN LLP**

Dated: 7/9/03

By:   
William A. English  
Reg. No. 42,515  
Attorneys for Applicants

Three Embarcadero Center, Suite 1800  
San Francisco, California 94111  
Telephone: (213) 680-6831  
Facsimile: (213) 680-6499

40229487.1

LA Office

415 393-2000